

900 KAR 2:020. Appeals.

RELATES TO: KRS 216.567

STATUTORY AUTHORITY: KRS 13B.005-13B.170, 216.567, 1998 Ky. Acts ch. 426, sec. 6

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services is authorized by KRS 216.567 to establish the manner in which appeals are to be presented on any decision on citations or penalties assessed pursuant to KRS 216.535 et seq. This administrative regulation is designed to set forth the procedure by which appeals from the imposition of citations and assessment of penalties pursuant to 900 KAR 2:040 shall be conducted.

Section 1. Definitions. (1) "Cabinet" means Cabinet for Health Services.

(2) "Citation" means a written notice of violation issued pursuant to KRS 216.555.

(3) "Hearing officer" is defined in KRS 13B.010(7).

(4) "Party" means the licensee operating a long-term care facility.

Section 2. (1) If the cabinet has reason to believe there has been a violation of any requirement enforced by the cabinet pursuant to KRS 216.555, or assesses a penalty pursuant to KRS 216.557 or 216.560, it shall issue and serve by certified mail or by personal service on the licensee of the facility, the administrator, or designated representative as defined in 900 KAR 2:010, or its agent for service of process a written notice of citation or penalty. Said notice shall set forth the citation made or penalty assessed, together with the specific findings of the cabinet alleged to result in the action taken and shall advise the licensee of the facility of his right to appeal the imposition of such citation or penalty at a hearing before the cabinet.

(2) Within twenty (20) days of the receipt of the written notice of action by the cabinet, the licensee of the facility may file a written request for hearing with the Secretary of the Cabinet for Health Services. Upon receipt of the written request for hearing, the secretary shall designate a hearing officer.

(3) A hearing shall be scheduled and commenced as soon as practicable after receipt of the request for hearing. Notice of the hearing shall be served by certified mail, return receipt requested, to the last known address of the parties, or by personal service, not less than twenty (20) days in advance of the hearing date. The notice of the hearing shall include the legal authority for the hearing, together with reference to the statutes, administrative regulations and administrative action by the cabinet involved, and shall comply with KRS 13B.050(3).

(4) The hearing officer may hold a prehearing conference to consider simplification of the issues, admissions of facts and documents which will avoid unnecessary proof, limitations of the numbers of witnesses and such other matters as will aid in the disposition of the matter. Disposition of the matter may be made at the prehearing conference, by stipulation, agreed settlement, or consent order. Prehearing conferences are to be open to the public. A written prehearing order shall be part of the record.

(5) The hearing shall be conducted in accordance with KRS 13B.080 and 13B.090.

(6) Within sixty (60) days of the closing of the record or hearing, the hearing officer shall make written findings of fact, conclusions of law, and a final decision based upon the official record of the proceeding. The record shall consist of those items listed in KRS 13B.130, including:

- (a) The notice of citation or penalty assessed which was forwarded to the licensee;
- (b) Any staff reports, memoranda, or documents prepared by or for the cabinet regarding the matter under review which were introduced at the hearing;
- (c) Any information provided by the parties which was introduced at the hearing;
- (d) Any other evidence admitted during the hearing with respect to the matter under review;
- (e) Upon its completion, the prehearing orders, if any, and the report of the hearing officer con-

taining the findings of fact, conclusions of law and final decision.

(7) Any party aggrieved by the final decision may appeal that decision to the Franklin Circuit Court in accordance with KRS 216.570. Any appeal of a Type A or Type B citation shall in no way be construed to limit the authority of the cabinet to act pursuant to KRS 216.573 or KRS 216.577 for failure to correct a Type A or Type B violation in a timely manner.

(8) In addition to the grounds for disqualification set forth in KRS 13B.040(2)(b), no hearing officer shall participate in any hearing involving a long term care facility with which he has had in the past twelve (12) months preceding the hearing, any ownership, in whole or in part, employment, staff, fiduciary, contractual, creditor or consultative relationship. (9 Ky.R. 527; Am. 931; eff. 5-4-83; 16 Ky.R. 918; eff. 1-12-90; 22 Ky.R. 2122; eff. 7-5-96; 25 Ky.R. 1216; eff. 1-19-99.)